MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2020/2021 SESSION

UCV4612 – CIVIL PROCEDURE I

(All Sections / Groups)

22 OCTOBER 2020
Reading Time: 9.00 am – 9.15 am
(15 Minutes)
Answering Time: 9.15 am – 12.15 pm
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 5 pages with 5 Questions only.

3. This paper consists of two parts. **PART A** is **COMPULSORY. PART B to attempt either Question 4A or 4B.** The distribution of the marks for each question is given.

4. Students are only allowed to bring in CLEAN AND ORIGINAL COPY of Rules of Court 2012 into the exam venue. "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.

5. Please write all your answers in the Answer Booklet provided.

QUESTION 1

(a) "A cause of action has two substantive rights, one is liability and the other is the relief."

Vellasamy a/l Ponnusamy & Ors v Gurbachan Singh a/l Bagawan Singh & Anor [2020] MLJU 695, per Datuk Dr. Haji Hamid Sultan bin Abu Backer JCA.

Elucidate the statement above.

(10 marks)

(b) X and Y first commenced a civil suit against A by way of Writ at the High Court (the 1st Civil Suit) as administrators of the estate of Z to challenge the status and/or the registration of A as the owner of a piece of land in the estate of Z (the said Land) based on fraud. The 1st Civil Suit was struck out pursuant to A's application under Order 18 rule 19 Rules of Court 2012. X and Y appealed to the Court of Appeal against the decision to strike out the 1st Civil Suit. Pending the appeal, X and Y commenced a subsequent civil suit against A by way of Originating Summons at the High Court (2nd civil suit) seeking an order for a *lis pendens* to be registered on the land title of the said Land. The purpose of *lis pendens* is to provide a constructive notice, or a warning, to prospective buyers that the ownership of a property is in dispute and that it is subject to ongoing litigation. The filing of a *lis pendens* is to protect one's claim to the title of a land pending the outcome of a lawsuit pertaining to the land and is only lifted once the lawsuit has been settled.

Based on the above –

(i) ascertain whether the mode of commencement of the 2nd Civil Suit is correct;
(7 marks)

(ii) evaluate whether the High Court should grant the remedy of a *lis pendens* to X and Y.
(8 marks)

(Total: 25 marks)

Continued…

QUESTION 2

The plaintiff, a licensed merchant bank, granted credit facilities to the first defendant company, while the second defendant stood as guarantor to those facilities. The plaintiff demanded repayment from the first defendant of all outstanding sums due to it and also demanded payment from the second defendant under the two guarantees that he had signed. The defendants having failed to comply with the demands made on them, the plaintiff commenced an action by way of Writ.

The plaintiff had indorsed the Writ with a statement of its claim, which was a full and proper pleading that set out all the material facts giving rise to the plaintiff's claim, namely, the nature and amount of the credit facilities offered to the first defendant, the dates of the offer and its acceptance, the mode of the offer, what rates of interest were to be charged, the dates on which the second defendant executed the guarantees and indemnities, and the dates and mode of demand made on the first and second defendants prior to the commencement of this action. In particular, the statement of claim stated the total amount owing by the first defendant including interest amounted to RM3,793,296.78. There was also an indorsement on the Writ to the effect that if the first and second defendants pay to the plaintiff or its solicitors within 20 days after the service of the writ the amount claimed and costs (‘20 days costs indorsement’), further proceedings would be stayed. Immediately following the 20 days costs indorsement, there followed another indorsement showing which firm of solicitors had issued the writ on behalf of the plaintiff, and its business address within the jurisdiction.

The Writ that was served on the defendants was a copy that had been returned to the plaintiff's solicitors by the court registry and bore on its face the letters 'LS' in a circle, which letters had been stamped onto the face of the Writ by the court registry, as is the practice in the High Court. Following service of the Writ, the defendants applied to set aside the Writ as well as the service on the grounds that the writ was invalid, bad and/or ineffective and ought to be set aside for irregularity. The defendants contended the writ was irregular in that it failed to comply with Order 6 rule 2(1)(b) of the Rules of Court 2012 (ROC). The defendants also contended that they were served with an ‘unsealed’ copy of the Writ. According to the defendants, they must be served with a sealed copy of the Writ that was issued out of the court registry pursuant to Order 6 rule 6(3) ROC.

Based on the above, evaluate whether –

(a) the writ was irregular in that it failed to comply with Order 6 rule 2(1)(b) ROC;
(15 marks)

(b) the defendant was to be served with a sealed copy of the Writ, or the service of a copy writ marked with the letters 'LS' in a circle was sufficient.
(10 marks)

(Total: 25 marks)

Continued…

QUESTION 3

(a) The plaintiff has commenced an action against the defendant by way of Writ issued from the Magistrate's Court at Kuala Lumpur on 8.11.2019. The Writ is endorsed with a statement of claim. The plaintiff's claim against the defendant is for monies due under a construction contract. On 7.2.2020 a judgment in default of appearance (JIDA) was entered against the defendant. It is for a sum of RM70,000.00 with interest at the rate of 8% per annum from 7.2.2020 until full payment and cost of RM600.00. The JIDA was served on the defendant on 16.3.2020 via A.R registered post. The defendant has not applied to set aside the JIDA to date.

Based on the above –

(i) justify the JIDA against the defendant;

(5 marks)

(ii) determine whether the JIDA may be set aside.

(12 marks)

(b) "It must be emphasised that third party proceeding is strictly between the defendant and the third party…."

Hamid Sultan Bin Abu Backer, *Janab's Key to Civil Procedure Combined Rules* (5th edn Janab (M) Sdn Bhd, Kuala Lumpur 2012) at p 155.

Explain the statement above.

(8 marks)

(Total: 25 marks)

Continued…

PART B: ANSWER EITHER QUESTION 4A OR QUESTION 4B

QUESTION 4A

(a) At the request of the first defendant, the plaintiff granted the first defendant financing facilities ('financing facility'). The second and third defendant were the guarantors to the financing facility. The first defendant defaulted in payment and the plaintiff commenced an action by way of Writ indorsed with a statement of claim against the defendants demanding payment of the outstanding amounts. The plaintiff then filed an application for summary judgment.

Based on the above –

(i) consider whether the application may be heard by the Court;

(5 marks)

(ii) explain the scope of summary judgment proceedings;

(5 marks)

(iii) explain the duty of the Court when deciding an application for summary judgment.

(10 marks)

(b) "The question of inordinate delay for an O 14 application lies at the discretion of the trial judge …"

MBF Finance Bhd v Hasmat Properties Sdn Bhd & Ors [1990] 1 MLJ 180, per Abdul Malek J.

Explain the statement above.

(5 marks)

(Total: 25 marks)

Continued…

QUESTION 4B

(a) The plaintiff's Writ and Statement of Claim were served on the defendant on 27.2.2020. The claim was for damages for breach of contract. The defendant first filed in an appearance and then the defence five days later. The plaintiff filed in an application for summary judgment on the ground that the defendant had no defence. The application was made prior to the defence filed by the defendant. The defendant objected to the application contending that there was a delay in making the application and further stated that the plaintiff's affidavit was defective.

Evaluate the contention made by the defendant.

(10 marks)

(b) "In a nutshell, the order enables the court to determine any question of law or construction of document where it appears to the court that such question is suitable for determination without the full trial of the action and such determination will finally determine the entire cause or matter or any claim or issue therein. The order is new to our civil procedure and hence, the few local decisions of the High Court on the ambit of O 14A are not instructive".

Petroleum Nasional Bhd v Kerajaan Negeri Terengganu [2004] 1 MLJ 8, per Mohd Noor Ahmad J.

Explain the statement above.

(7 marks)

(c) Compare and contrast conditional and unconditional leave to defend in an application for summary judgment.

(8 marks)

(Total: 25 marks)

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